IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2007

CORAM

THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

Appeal Suit No.352 of 1992

A.G.Pasupathy ..Appellant/Plaintiff

Versus

1. S.Damodaran
2. Mangaleswari
3. Mohammad Ismail ..Respondents/Defendants

R1 & 2 remained exparte
in the Lower Court.

Appeal suit filed under Section 96 of the Civil Procedure Code, against the Judgment and decree dated 23.03.1990 made in O.S.No.5058 of 1983 on the file of XV Asst. Judge, City Civil Court, Madras.

For Appellant : Mr.R.Mohan

For Respondents : Mr.G.Ramachandran for R3

JUDGMENT

This appeal suit is filed by the plaintiff against the judgment and decree dated 23.03.1990 in O.S.No.5058 of 1983, on the file of the XV Assistant Judge, City Civil Court, Chennai in and by which the learned Sub-Judge after analysing the evidence in depth found that the plaintiff is not entitled to the suit claim and accordingly dismissed the suit.

2. For convenience, the parties are referred as arrayed in the suit. The plaintiff states as follows:

(i)An Agreement of sale was entered into on 20th June 1979 between the plaintiff and the first defendant, under which the first defendant agreed to sell the portion of house, ground and premises No.47.(Old No.19/2) Peters Road, Royapettah, Madras-600 014, for a sale consideration of Rs.30,000/- free from all

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encumbrances. The plaintiff paid the first defendant a sum of Rs.5,000/- on the date of the agreement and the plaintiff was put in possession of the suit property as part performance of the agreement of sale. The plaintiff was authorised to make repair to the suit property. The plaintiff continue to be in possession of the suit property in part performance of the agreement of sale. Under the agreement, it was provided that the sale shall be completed within three months from the date of agreement. Time was not made the essence of the contract. By 4.6.1980 to a total sum of Rs.11,500/- was paid in cash. By consent on 4.6.1980 time for performance was extended upto 30th June 1980.

(ii) The plaintiff paid on 17.6.1980 a sum of Rs.1,500/- to the first defendant. The plaintiff was ready and willing to perform his part of the contract at all material times. As undertaken, the plaintiff paid interest on the mortgage amount. A sum of Rs.4,200/- was paid towards interest to Khader, the Mortgagee as directed by the first defendant.

(iii) The first defendant instead of executing the sale Deed for the reasons best known to himself executed a deed of settlement on 4.7.1980 in favour of his wife the second defendant and the second defendant filed O.S.No.4351 of 1980, on the file of the IX City Civil Judge, Madras, falsely alleging trespass against the plaintiff praying for recovery of possession and for injunction and later on withdraw the suit.

(iv) The plaintiff on 6.3.1981 paid a further sum of Rs.500/- to the first defendant towards the sale consideration.

(v) On 10.7.1981 the defendants 1 and 2 sent a notice to the plaintiff. In that notice, defendants 1 and 2 referred to agreement of sale dated 20.6.1979. The plaintiff sent a reply dated 25.7.1981.

(vi) The plaintiff by lawyer's notice dated 25.7.1981, called upon defendants 1 and 2 to be present at the office of the Sub-Registrar at Mylapore on 5.10.1981 at 11.00 a.m for registering the sale deed for receiving the balance of sale consideration.

(vii) On 26.9.1981, the first defendant sent a letter addressed to plaintiff stating that his wife the second defendant sold the suit property to the third defendant and that the plaintiff should attorn the tenancy in favour of the third defendant. The plaintiff also received a letter dated 26.9.1981 from the third defendant stating that he has purchased the suit property from defendants 1 and 2 under sale deed dated 25.9.1981.

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(viii) The claim of the defendants as if the plaintiff is a tenant is absolutely false. The plaintiff has been in possession of the suit property in part performance of the agreement of sale in his favour. There has been no relationship of landlord/land-lady between defendants 1 and 2 and the plaintiff and 3rd defendant and the plaintiff. The defendants are trying to interfere with the plaintiff's peaceful possession of suit property.

(ix) The purchase made by the 3rd defendant of the property is with full knowledge of the subsisting agreement of sale in favour of the plaintiff by the first defendant. The purchase made by the 3rd defendant of the suit property is not bona fide and without notice. The purchase made by 3rd defendant is speculative and with full knowledge. The purchase made by the 3rd defendant ignoring the sale agreement in favour of the plaintiff is not binding on the plaintiff as the 3rd defendant is not a bona fide purchaser for value without notice, is impleaded as party defendant in the suit. Hence the suit.

3. The third defendant stated as follows:

(i) The defendant has purchased the suit property from its lawful owners, the first and the second defendant for a sale consideration of Rs.30,000/- in cash after due notices to the plaintiff, for his personal use and occupation. As such he is a bona fide purchaser for value without notice of any alleged agreement, between the plaintiff and the first defendant herein.

(ii) The sale was registered on 25.9.1981. Subsequent to the sale also the plaintiff was put to notices to attorn the tenancy and pay the rents to this defendant. This defendant also issued notices to the plaintiff to pay the arrears and to vacate the premises since he has purchased the same for his personal use and occupation and since he is not having any other building in the city of Madras.

(iii) After the purchase of the suit property, the Collector of Madras, the Corporation of Madras, the M.M.W.S.S. Board and the Electricity Board, entered the name of this defendant as owner of the said property. The plaintiff is fully aware of this. Subsequent to the changes this defendant has paid the property taxes, water Board Charges etc., in his own name. The plaintiff paid the electricity consumption and water Board charges for the electricity and water used by him in the name of this defendant as owner of the property.

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(iv) When the Corporation tax authorities came to assess the said property, the plaintiff admitted that he is a tenant in the said property and paying a monthly rent of Rs.75/-. The Corporation authorities issued a tax demand based on the rental value as admitted by the plaintiff.

(v) This defendant filed H.R.C.No.6088 of 1981. After thorough enquiry the learned XI Judge, Court of Small Causes, Madras held that this defendant is the owner of the said property and his requirement for personal use is bona fide and that the plaintiff is a tenant under this defendant on a monthly rent of Rs.75/-.

(vi) The plaintiff filed R.C.A.No.1486 of 1984 against this order. The same was dismissed by the Learned IV Judge, of the said Court after thorough and elaborate enquiry. The order of the Learned Rent Controller in holding that the plaintiff is a tenant in respect of the suit property and the requirement for personal use of this defendant is bona fide has been confirmed.

(vii) Since the plaintiff has not paid the arrears of rent, this defendant filed R.C.O.P.No.721/82 and obtained an order of eviction against the plaintiff. To delay the eviction proceedings the plaintiff has filed the above suit. Hence, the suit is dismissed.

4. The plaintiff was examined as P.W.1 and one Somasundaram was examined as P.W.2. Ex.A.1 to A.19 were marked on the side of the plaintiff. The third defendant was examined as D.W.1 . Exs.B1 to B.10 were marked, to confront the claim of the defendant. The lower court analysed the evidence, found that the plaintiff is not entitled to the suit claim and accordingly dismissed the suit, against which, the plaintiff has filed this appeal suit.

5. Heard Mr.R.Mohan, learned counsel appearing for the appellant and Mr..G.Ramachandran for R3.

6. Upon hearing the rival claims, the points for determination are:

(i) Whether the plaintiff/appellant was put in possession of the suit property under Section 53(a) of TP Act in pursuance of the agreement of sale between the plaintiff and the first defendant.

(ii) Whether the landlord and tenant relationship exists between the plaintiff and the third respondent.

(iii) Whether the third defendant is a bona fide purchaser of the suit property.

(iv) Whether the finding of the lower court in dismissing the suit is in order.

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Point No.1: It is a specific case of the plaintiff that he was put in possession of the suit property in pursuance of the sale agreement entered into between him and the first defendant as early as on 20.06.1979. He further submitted that the plaintiff has paid a sum of Rs.5000/- as on date of the agreement. D.1 and D.2 did not contest the case. The subsequent purchaser namely, D.3 alone is contesting the case.

The learned counsel for the respondent/third defendant would contend that the relationship of landlord and tenant exists between the plaintiff and himself as on date and that he is a bona fide purchaser of the suit property for the value paid in cash, without the knowledge of the agreement of sale and as such, the plaintiff cannot be stated to be in possession of the suit property under Section 53(a) of TP Act.

Rival contentions are considered in detail. It is admitted that the first defendant is the original owner of the suit property. It is also admitted that the first defendant entered into a sale agreement with the plaintiff in respect of the suit property. On 17.06.1980, the first defendant received a sum of Rs.1500/- from the plaintiff and issued the receipt admitting the sale transaction between him and the plaintiff. The said receipt is marked as Ex.A.1. The contends of the letter is useful to deal with the facts on hand. It reads as follows:

> "RECEIVED Rs.1,500/- (Rupees one thousand and five hundred only) being the further advance in respect of the sale of the portion of the premises bearing No.47, Peters Road, Royapettah, Madras 600014 from A.G.Pasupathy.
>
> The balance of the sale consideration to be paid excluding the mortgage amount is Rs.3,500/- (Rupees Three thousand and five hundred only)."

The genuineness of the said receipt was not disputed by the third defendant. So, the contents of the receipt binds on the third defendant. It is also admitted that during the subsistence of the sale agreement between the first defendant and the plaintiff, the first defendant executed a settlement deed in respect of the suit property in favour of the second defendant, which is evident from Ex.A.14.

On 6.3.1981, the first defendant received a sum of Rs.500/- from the plaintiff and affirmed about the possession of the suit property by the plaintiff in pursuance of the sale transaction. The contends of Ex.A.3 reads as follows:

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"ஏ,ஜீ,பசுபதி அவர்கள் இடம் நம்பர் 47 பீட்டர்ஸ் ரோட் என்ற விலாசத்தில் இருக்கும் அவர் இடம், மேற்படி இடத்திற்காக மேலும் ரூபாய் 500/. பெற்றுக்கொண்டேன், "

The first defendant on 10.7.1981 sent a lawyer's notice to the plaintiff admitting the possession of the plaintiff in pursuance of the sale agreement. It is also admitted that the original documents of the suit property was handed over by the first defendant to the plaintiff in pursuance of the sale agreement. In the said notice, the possession of the suit property by the plaintiff in pursuance of the sale agreement was also admitted by the first defendant. This notice was marked as Ex.A.4. The genuineness of Ex.A.4 was not disputed by the third defendant. The first plaintiff also sent a suitable reply as per Ex.A.5. The genuineness of Ex.A.5 was also not disputed by the third defendant.

Having admitted about the lawful possession of the plaintiff in pursuance of the sale agreement under Section 53(a) of the Act, by the first second defendant after obtaining the settlement deed, in her favour from the first defendant, filed a suit in O.S.No.4351 of 1980 claiming that the plaintiff is a trespasser and prayed for possession of the suit property. The said suit subsequently was withdrawn as settled out of court by the plaintiff. It is not the case of the second defendant who is the plaintiff in O.S.No.4351 of 1980 that the said suit was withdrawn with the consent of the appellant/plaintiff herein and the defendant in the said O.S. A copy of the original suit of the plaint along with the courts order is marked as Ex.A.7. A portion of the recital in the plaint reads as follows:

"while so, on 9.7.1980, the plaintiff was away from house, the defendant taking advantage of the same, had committed trespass into the above premises and forcibly occupied a portion of the same consisting of two rooms which is roughly 1/4th of the total premises, throwing away th articles and things kept by the plaintiff in one of the rooms without any kind of right or title to do so." As per the pleedings of the second defendant, who is the plaintiff in O.S.No.4351 of 1980, the appellant/plaintiff who was the defendant in the said suit was the trespasser of the suit property.

Whereas the first defendant in his earlier letters and correspondence and receipts admitted that the plaintiff is not in possession of the suit property in pursuance of the sale agreement.

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In either way, possession of the suit property by the plaintiff is admitted, in the capacity as a trespasser or under Section 53-A of the Transfer of Property Act. The first defendant admitted that the plaintiff/appellant is in possession of the suit property in pursuance of the sale agreement.

Whereas the second defendant in the said suit, while admitting the possession of the suit property, by the plaintiff/appellant declared him as a trespasser in the said suit.

In either way, the plaintiff is not a tenant in respect of the suit property as alleged by the defendant.

By admission of the first defendant and second defendant, it is apparent that the plaintiff either be in possession of the suit property in pursuance of the agreement of sale, or should be a trespasser as alleged by the second defendant in the said suit.

When the fact is such, suddenly the defendant issued a notice to the plaintiff declaring him as a tenant in respect of the suit property and requested him to vacate the premises. The said notice was also suitably replied by the plaintiff. Basing on the said notice, the third defendant resorted to eviction proceedings before the Rent Control Court, seeking eviction of the plaintiff. A copy of the order passed in RCOP.No.6080 of 1981 has been filed as Ex.B.9.

No doubt it is true that in the said order, the Rent Controller declared that the plaintiff is a tenant in respect of the suit property. In the ground reality, the plaintiff was not a tenant in respect of the suit property. He was in possession of the suit property only in pursuance of the sale agreement entered into between him and the first defendant. This fact was not taken note of by the Rent Controller resulting in rendering a wrong finding that the plaintiff is a tenant of the suit property. Only with a view to resort to the Rent Control Proceedings for eviction, wisdom dawn on the defendants, to send a notice to the plaintiff declaring him as a tenant. Such an attitude of the defendants declaring the plaintiff as a tenant, while the fact is otherwise is only with a view to throw away the plaintiff in a short circuit method. So, I am satisfied that the plaintiff is in possession of the suit property only in pursuance of the sale agreement which fact was not taken note of by the lower Court in a right perspective. Therefore, this point is answered in favour of the plaintiff.

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Point No.2: In view of the finding rendered in point-2, I find that the relationship of landlord and tenant between the parties does not exist between them.

The Rent Controller in RCOP.No.6080 of 1980.. has wrongly considered the plaintiff as a tenant which is not correct in view of the materials placed on record and the same is liable to be set aside and accordingly set aside.

Point No.3: It is true that the original sale deed of the suit property is with the plaintiff. The same has been filed in this case. It is also true that the plaintiff is in possession of the suit property, in pursuance of the sale agreement entered into between him and the first defendant. The third defendant was also aware that the plaintiff is in possession of the suit property not as a tenant, but in pursuance of the agreement of sale between the plaintiff and the first defendant. Even according to the second defendant, the plaintiff is a trespasser of the suit property. The second defendant is a vendor of the third defendant and the vendor herself considered the plaintiff as a trespasser. If that be so, it is not open to the third defendant to contend that the plaintiff is a tenant and resort to eviction proceedings before the Rent Controller. Such an attitude of the third defendant exposed that his object is to secure the property in short circuit method by resorting to the Rent Control Proceedings instead of seeking redress in a lawful manner before the Civil Court. The narration of the event exposed that the third defendant is not a bona fide purchaser of the suit property. Hence the point is answered against the third defendant.

Point No.4: The material placed on record would prove that the plaintiff is in possession of the suit property in pursuance of the sale agreement between him and the first plaintiff, attracting protection under Section 53(a) of TP Act. Without considering this aspect, the lower court erred in holding that the plaintiff is not entitled to the suit claim and dismissed the suit which is not in accordance with law and the same is liable to tbe set aside and accordingly set aside.

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7. At the time of argument, the learned counsel for the third defendant contended that the third defendant is in possession of the eviction order against the plaintiff and that in case of dismissal of the appeal, he can seek redress before the Rent Control Court, by getting possession of the property in view of the eviction order. But, he has not produced any document to sustain his claim. Even otherwise the third defendant cannot seek relief before the Rent Controller as Civil right of the plaintiff in

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respect of the suit property has been established. Even if the third defendant is armed with eviction order of the Rent Control Court, he cannot get any remedy over the same, as the plaintiff established his civil right under Section 53-A of the Transfer of Property Act, in respect of the suit property by virtue of the document executed by the first defendant. Apart from that, the second defendant also declared the plaintiff is a trespasser of the suit property. In such view of the fact that the third defendant cannot seek remedy of getting possession of the property through the Rent Control Proceedings.

8. With the result, the appeal is allowed. The Judgment and decree of the lower Court in O.S.No.5058 of 1983, dismissing the suit is set aside. The suit is decreed with the following direction:

"The defendants are directed to execute a sale deed in favour of the plaintiff conveying title to the suit property forthwith failing which, the lower Court is directed to execute the sale deed in favour of the plaintiff under the provisions of Order 21 Rule 34 of the Code of Civil Procedure. Parties have to bear their respective costs."

ksr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The XV Asst. Judge, City Civil Court, Madras.

2. The Registrar, City civil Court, Chennai.

3. The Record Keeper, VR Section, High Court, Madras.

+ 1 cc to Mr. G. Ramachandran, Advocate, SR No.2549
+ 1 cc to Mr. R. Mohan, Advocate, SR No.2653

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